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#3

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In re Application of
KORTH, Carsten *et al*
U.S. Application No.: 09/380,015
PCT No.: PCT/EP98/00917
Int. Filing Date: 23 October 1997
Priority Date: 24 October 1996
Attorney's Docket No.: DT 3073
For: IMMUNOLOGICAL DETECTION OF
PRIONS

DECISION ON PETITION
UNDER 37 CFR 1.181

The decision is in response to the papers submitted on the above-captioned application. The file was reported as lost and applicants submitted a copy of the attorney's file with the appropriate postcard receipt. This is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 23 August 1999, applicants purportedly filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, a copy of the original specification, PCT Request, International Preliminary Examination Report, two signed declarations, and authorization to charge the required fees to Deposit Account No. 50-0955.

On 18 May 2000, the DO/EO/US reported the case as lost.

On 09 May 2000, applicants submitted a copy of the attorney's file in the above-captioned application. On 24 May 2000, applicants resubmitted the file. On 01 June 2000, applicants again resubmitted the above-captioned attorney's file via facsimile. Applicants included a copy of the postcard receipt for the papers filed 09 May 2000 and 24 May 2000.

On 21 August 2000, applicants submitted via facsimile a copy of the postcard receipt for the original papers submitted 23 August 1999.

DISCUSSION

MPEP 503 lists procedures for applicants to ensure receipt of any paper filed in the PTO. Applicants must enclose a self-addressed postcard identifying all of the papers filed. The PTO will stamp the receipt date on the card and place it on the outgoing mail. The identifying data on the card must clearly identify the paper for which receipt is requested. For example, the MPEP states each separate component, e.g., the number of pages of specification, number of claims (nonprovisional applications), number of sheets of drawings, cover sheet (provisional applications), etc. should be itemized on the postcard.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt clearly identifies the application by title, applicant, serial number and docket number. The receipt itemizes all papers filed in the PTO including the papers filed: a copy of the original specification, PCT Request, International Preliminary Examination Report, and two signed declarations. The receipt is stamped, but the stamp is somewhat smudged. The stamp appears to be "518 Rec'd PCT/PTO 23 AUG 1999." Moreover, a review of PTO computer records indicate that the 371 request was received in the above-captioned application on 23 August 1999. Furthermore, PTO financial records show that the mailroom date for the fees collected in the above-captioned application from Deposit Account No. 50-0955 is also 23 August 1999.

In light of the evidence provided by applicant and corroborating PTO records, it is clear that the original papers were received by the PTO in the above-captioned application on 23 August 1999.

CONCLUSION

For the reasons stated above, the petition under 37 CFR 1.181 is GRANTED.

Applicants have completed the requirements for acceptance under 35 U.S.C. § 371(c). The application has an international filing date of 23 October 1997, under 35 U.S.C. 363, and a 35 U.S.C. 102(e) and 371(c) date of 23 August 1999. This application is being forwarded to the National Stage Processing Division of the PCT Operations Office for continued processing.



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